IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 27TH MARCH 2007 / 6TH CHAITHRA 1929

OP.No. 34573 of 2001(N)

PETITIONER:
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1. THE EXECUTIVE DIRECTOR,
VIJAYA HOME LOANS LTD.,
C.V.S. COMPLEX, JAYANAGAR,
BANGALORE, REP. BY HIS POWER
HOLDER JAYACHANDRAN.K.S.,
OFFICER, VIJAYA HOME LOANS LTD.,
278-G, TELLICHERRY ROAD, KANNUR-670 002.

2. THE OFFICER, VIJAYA HOME LOANS LTD.,
THALASSERY ROAD, P.O.THANA, KANNUR.

BY ADV. SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU

RESPONDENTS:
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1. BYJU.M., MANNAMBETH HOUSE,
MUZHATHADAM, P.O. THANA, KANNUR.

2. THE DEPUTY LABOUR COMMISSIONER,
KANNUR.

R1 BY ADV. SRI.K.ANAND

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 27/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NOS.56473/2001 & 38866/2002 IN O.P. NO.34573/2001

DISMISSED:

27.3.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1:TRUE COPY OF POWER OF ATTORNEY IN FAVOUR OF 2ND PETITIONER.

P2: TRUE COPY OF APPEAL IN SHOP APPEAL NO.6/99 ON THE FILES OF R2.

P3: TRUE COPY OF COUNTER STATEMENT FILED BY PETITIONERS.

P4: TRUE COPY OF THE APPOINTMENT LETTER DT.14.6.97.

P5: TRUE COPY OF ORDER DT.21.6.2001 BY R2.

P6: TRUE COPY OF DEMAND NOTICE ISSUED U/S.7 OF THE R.R. ACT.

RESPONDENT'S EXHIBITS:

R1(a): TRUE PHOTOCOPY OF APPOINTMENT LETTER DT.22.7.1998 ISSUED BY THE PETITIONERS TO THIS RESPONDENT.

R1(b): TRUE COPY OF LETTER DT.19.1.99 OF THE PETITIONERS TO THIS RESPONDENT.

R1(c): TRUE PHOTOCOPY OF SERVICE CERTIFICATE GIVEN BY PETITIONERS TO THIS RESPONDENT DT.25.2.99.

R1(d): TRUE COPY OF LETTER DT.3.9.2001 SENT BY THIS RESPONDENT TO PETITIONERS.

R1(e): TRUE COPY OF EXECUTION PETITION DT.3.10.2001 FILED BY THIS RESPONDENT.

TRUE COPY

P.A. TO JUDGE

C.R.

C.N.RAMACHANDRAN NAIR,J.

O.P. NO. 34573 OF 2001

Dated this the 27th day of March, 2007

JUDGMENT

Petitioner is challenging Ext. P5 order issued under Section 18(2) of the Kerala Shops and Commercial Establishments Act, hereinafter called the "Act" by which the Deputy Labour Commissioner cancelled the termination of service of the first respondent and directed reinstatement and in the alternative payment of compensation by the petitioner. I heard counsel appearing for the petitioner, and counsel appearing for the first respondent.

2. The main contention raised is that house building finance company run by the petitioner is not a commercial establishment within the meaning of section 2(4) of the Act. While the contention of the petitioner is that the activity of the petitioner is not banking business or any of the activities referred to in the definition clause, counsel for the first respondent contended that petitioner is engaged in advancing loans for house construction and therefore is an establishment engaged in

banking business and in the alternative engaged in commercial activity which also answers the definition of "commercial establishment" for the purpose of the Act. In order to appreciate the contentions, defintion clause 2(4) has to be referred to and accordingly it is extracted hereunder for easy reference:

> 2. Definitions.-- In this Act unless the context otherwise requires,--
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> (4) ' commercial establishment' means a commercial or industrial or trading or banking or insurance establishment, an establishment or administrative service in which the persons employed are mainly engaged in office work, hotel, restaurant, boarding or eating house, cafe or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes such other establish as the Government may, by notification in the Gazette, declare to be a commercial establishment for the purposes of this Act, but does not include a factory to which all or any of the provisions of the Factories Act, 1948 (Central Act 63 of 1948) apply;
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> .....

From the above it is clear that any commercial or industrial or trading

establishment answers the description of "commercial establishment". Therefore there is no necessity to go into the question whether petitioner is engaged in banking business or not, if petitioner's activity is commercial or industrial. Ordinary mean of "commercial" contained in the dictionary covers any engagement or activity with profit as prime aim. Petitioner has no dispute that petitioner's activity, namely, advancing of loans for house construction is not an activity for profit and therefore it squarely answers the description of commercial activity covered by the above definition clause. Even though petitioner has relied on the decision of this Court in A.O. THOMAS V. T.K. RAMESAN, (1995) 1 K.L.J. 291, I do not find any application of the said decision because the organisation referred to therein is a committee established to maintain a building complex which was found to be not a commercial establishment by this Court. Counsel for the first respondent has relied on the decision of the Madras High Court in M. HARI RAJ V. SHAW WALLACE & COMPANY LTD., 1999 LAB.I.C. 1091 wherein the Madras High Court has held that termintion of employment based on Agreement was illegal, as the same was

contrary to statute.

3. The next ground of challenge raised against Ext.P5 is that Ext.P4 order of appointment of the first respondent entitles the petitioner to terminate the service of the first respondent by giving one month's notice pay or after giving 30 days notice. However, it is well settled position that a "term" contained in the appointment order cannot override statutory provision. Section 18(1) of the Act prohibits an employer from dispensing with the service of an employee employed continuously for a period of not less than six months, except for a reasonable cause and without giving such employee at least one month's notice or wages in lieu of such notice. It is clear from the above Section that termination was called for only for reasonable cause. Factually in this case, petitioner has no claim that there is reasonable cause for termination of first respondent's service at the time when he was removed from service. On the other hand, Ext.R4 certificate issued by the petitioner itself shows that first respondent completed training successfully and was found good in work by the petitioner. In the circumstances, the condition in the appointment order

in Ext.P4 does not stand in the way of the Deputy Labour Commissioner ordering reinstatement of the first respondent as termination of his service was against Section 18(1) of the Act.

4. The next challenge is against the relief granted in Ext.P5. It is stated that the office of the petitioner is later closed in Kannur where the first respondent was employed. Therefore reinstatement of the first respondent in the same station does not arise at all. Counsel for the petitioner offered employment to the first respondent at Trivandrum or Bangalore branch. It is not known whether the first respondent is interested in employment either in Trivandrum or Bangalore. Counsel for the first respondent submitted that unless petitioner offers escalation in salary, first respondent may not be able to work in Trivandrum or Bangalore on the last drawn salary. If petitioner offers employment to the first respondent, it should be necessarily under fresh terms of employment in regard to salary, because he was wrongly removed from service more than 8 years back. Therefore I leave this issue to be decided between the petitioner and the first respondent. It is open to the petitioner to offer current terms of reinstatement to the first

respondent and if he accepts it, then there is no need to pay compensation to the first respondent. On the other hand, if fresh terms of appointment offered by the petitioner are not acceptable to the first respondent, then petitioner shall pay balance compensation with 12% interest within two months from today.

O.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge